REMARKS

Reconsideration of the above-identified application as amended respectfully is solicited on behalf of the Applicant.

With the instant response, 6 claims have been amended and 14 claims have been cancelled in order to materially advance the status of the present prosecution.

In the amended Fig. 2, the numeral 22 referring to the center axis has been changed to "12," and the lead lines extending from numerals 30 and 40 have been corrected to point to, respectively, the thermal transfer layer and the fire-resistant layer.

The Specification has been amended to correct the informalities noted by the Examiner.

Claims 16 and 17 have been amended to provide proper antecedent basis.

Claims 1-12, 16-26, and 30-31 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the instant assignee's XPTF-type tubing shown on page A31 of its 4200-M-1 catalogue, in view of Davidson, U.S. Patent No. 6,028,975, and Rahman *et al.*, U.S. Patent No. 5,390,273.

As amended, independent claim 1 recites a flexible tubing bundle construction, including at least one thermal transfer layer formed of a metal foil material surrounding tube bundle, and at least one fire-resistant layer formed of a fibrous material surrounding the thermal transfer layer.

The Examiner considers that it would have been obvious to modify the fire-resistant layer of the XPTF-type tubing such that it would have a fire-resistant layer formed of the fibrous material of Rahman. No reason, however, has been provided as to why it would have been obvious to substitute the metallized film of Davidson for the heat resistant tape of the XPTF-type tubing.

Indeed, even assuming *arguendo* the metallized film of Davidson to be equivalent to the claimed metal foil, it is believed it would not be obvious to substitute such a material, which is thermally-conductive, for a material, like a heat-resistant tape, which is a thermal insulator. In this regard, it is well-settled that references are not properly combinable or modifiable if their intended function is destroyed. MPEP § 2143.02, *citing In re Gordon*, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). As stated in the 4200-M-1 catalogue, "[a] double layer of heat-resistant tapes are wrapped around the inner FR PVC to act as an additional thermal barrier to further delay the conduction of heat from a flash fire through to the tubing." Thus, it appears that to substitute a thermally-conductive metal foil for the thermally-insulating type of the XPTF-type tubing would be tantamount to destroying the function of the tape as a thermal barrier.

Accordingly, it is submitted that claim 1 should be considered to distinguish over the cited references. Claim 18 describes the flame-retardant flexible tubing bundle construction of claim 1

wherein said thermal transfer layer has a thermal conductivity of at least about 0.14 W/m-°K, and further should be considered allowable for the reasons given in connection with claim 1.

Claims 3 and 19-31 have been canceled. The remaining dependent claims, namely claims 4-17, further describe the tubing bundle construction of claim 1, and likewise should be considered allowable.

In view of the foregoing remarks, wherein the claim program as amended has been shown to clearly define the claimed invention as being patentable over art made of record, the issuance of a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited on September 22, 2003, with the United Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

John A. Molnar, Jr.